



Signed: July 25, 2008

*Leslie Tchaikovsky*

LESLIE TCHAIKOVSKY  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
DARRIN ALLISON, MARIANNE  
ALLISON,

No. 06-41745 TD  
Chapter 7  
R.S. No. MAW 929

Debtors.

**MEMORANDUM RE MOTION FOR RELIEF FROM STAY**

The motion of Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Homecomings Financial Network, Inc., its successors and/or assigns ("Homecomings"), for relief from the automatic stay came on for hearing before the above-captioned Court on July 25, 2008 at 11:00 a.m. Appearances were stated on the record. The Court announced that it had some concerns, which it would set forth in writing, and continued the hearing to August 15, 2008 at 11:00 a.m. Those concerns are as follows:

The Court is informed that MERS has neither an equitable interest in the secured claims that form the basis for the motions it files in bankruptcy court nor any servicing obligations. The Court is informed that MERS simply provides the name in which the real

1 party in interest acts so that names need not be changed when the  
2 underlying note changes hands.

3 In the instant case, the declaration is signed by an employee  
4 for Aurora Loan Services, Inc. ("Aurora") which is identified as the  
5 loan servicer for MERS as nominee for Homecomings. The deed of  
6 trust, copies of which are attached to the declaration, identify  
7 Countrywide as the lender. However, no copy of the note is attached.  
8 This gives the Court some concern that the note has been assigned and  
9 that Countrywide has not been accurately identified as the party on  
10 whose behalf MERS has filed the motion. The Court may not grant a  
11 motion that is not filed in the name of the real party in interest.

12 END OF DOCUMENT  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

COURT SERVICE LIST

Matthew M. Spielberg  
Law Offices of Matthew M. Spielberg  
21855 Redwood Rd.  
Castro Valley, CA 94546-6435

Melodie A. Whitson  
Pite Duncan, LLP  
525 E. Main St.  
P.O. Box 12289  
El Cajon, CA 92022-2289